

April 2, 2003 BZA



REQUEST ANALYSIS
AND
RECOMMENDATION

03AN0228

Advance America, Cash Advance Centers of Virginia, Inc.

Midlothian Magisterial District
7822 Midlothian Turnpike

REQUEST: Appeals a Notice of Zoning Violation regarding the operation of a payday lender in a Community Business (C-3) District.

RECOMMENDATION

Recommend that the Board upholds the decision of the Director of Planning.

GENERAL INFORMATION

Location:

Property is located at 7822 Midlothian Turnpike. Tax ID 760-706-8366 (Sheet 7).

Existing Zoning:

C-3 and R-15

Size:

9.3 acres

Existing Land Use:

Commercial

Adjacent Zoning and Land Use:

North - C-5; Vacant
South - C-3; Commercial
East - MH-1 and C-5; Commercial and residential
West - C-3; Commercial

General Plan:

(Eastern Midlothian Area Plan)

Community mixed use

DISCUSSION

Advance America, Cash Advance Centers of Virginia, Inc. ("Advance America" or "appellant") appeals a Notice of Zoning Violation relating to the operation of a payday lending business at 7828 Midlothian Turnpike. Appellants contest the determination by the Planning Department that a payday lending business is not a permitted use in a C-3 District, even with a Conditional Use permit. The Planning Department maintains that payday lending is not of the "same general character" as the enumerated uses found in the Zoning Ordinance sections governing a C-3 District, however, is of the "same general character" as uses found in a C-5 District. As such, for Advance America to continue conducting business in its current location, rezoning from a C-3 to C-5 District and obtaining a Conditional Use permit with approval by the Board of Supervisors, is required.

Payday lending is not a specifically enumerated use of right in the County's Zoning Ordinance. Consequently, any operation of a payday lending establishment requires a Conditional Use permit. Pursuant to County Code Section 19-161, which governs conditional uses in a C-3 District, only those uses of the "same general character" as permitted uses are eligible to obtain Conditional Use permits. Pursuant to County Code Section 19-157, permissible uses in a C-3 District include those uses permitted by right in areas zoned C-1. County Code Section 19-144(c) lists one of these permitted uses as "[b]anks and savings and loan associations with or without drive-in windows." (emphasis added). Payday lender establishments are not of the "same general character" as banks or savings and loan associations. However, payday lending does fall within the catch-all provision of County Code Section 19-175, which sets forth the types of uses that may be allowed as a Conditional Use in a C-5 District. Section 19-175(j) states that "other uses which are not specifically enumerated in this chapter and which are of the same general character as the specifically enumerated uses allowed in this district" require a Conditional Use permit. Payday lending is consistent with the "general character" of uses permissible in C-5 District, not otherwise found in other districts. Since the appellant's business use falls outside the realm of permissible uses in a C-3 District, rezoning to a C-5 District is required. Additionally, because payday lending is not permitted by right in a C-5 District, a Conditional Use permit will also be required in order for Advance America to comply with zoning.

On or about January 6, 2003, an inspection of the appellant's property observed the appellant was maintaining a payday lending establishment in a Commercial (C-3) District. The appellant was

sent a Notice of Zoning Violation dated January 9th informing them that the property must be rezoned from a C-3 to a C-5 District. The Notice also stated that a Conditional Use permit would also be required. The appellant does not contest that a Conditional Use permit is required, therefore the only issue before the Board for evaluation is that of rezoning.

The appellant attempts to associate itself with the banking industry and also with an undefined group they have termed "consumer finance companies," a use category not found in the Zoning Ordinance. Advance America is a payday-lending establishment, a business not of the "same general character" as banks or savings and loan associations, which are permitted uses in a C-3 District. There exist substantial and significant distinctions between the purposes, procedures and goals of payday lending establishments and, bank and savings and loan institutions. To receive a "payday loan" the consumer writes a check for the amount of the cash advance, plus the fee. The payday lender holds the check until the consumer's next payday. The payday lender then negotiates the consumer's check.

In addition, a separate statute regulates the payday lending industry. Effective July 1, 2002, the General Assembly enacted the Payday Loan Act (Va. Code Section 6.1-444, et seq.) in order to regulate payday lenders who were not regulated under the Banking Act (Va. Code Section 6.1-3, et seq.), the Virginia Savings Institutions Act (Va. Code Section 6.1-194.1, et seq.) nor, under the Consumer Finance Act (Va. Code Section 6.1-244, et seq.), formerly the Small Loan Act. Under Virginia law, a "bank" is defined as "a corporation authorized by statute to accept deposits and to hold itself out to the public as engaged in the banking business in this Commonwealth." A "savings and loan association" is authorized to accept deposits and hold itself out to the public as engaged in the savings institution business. The nature of the appellant's industry is not compatible with either definition.

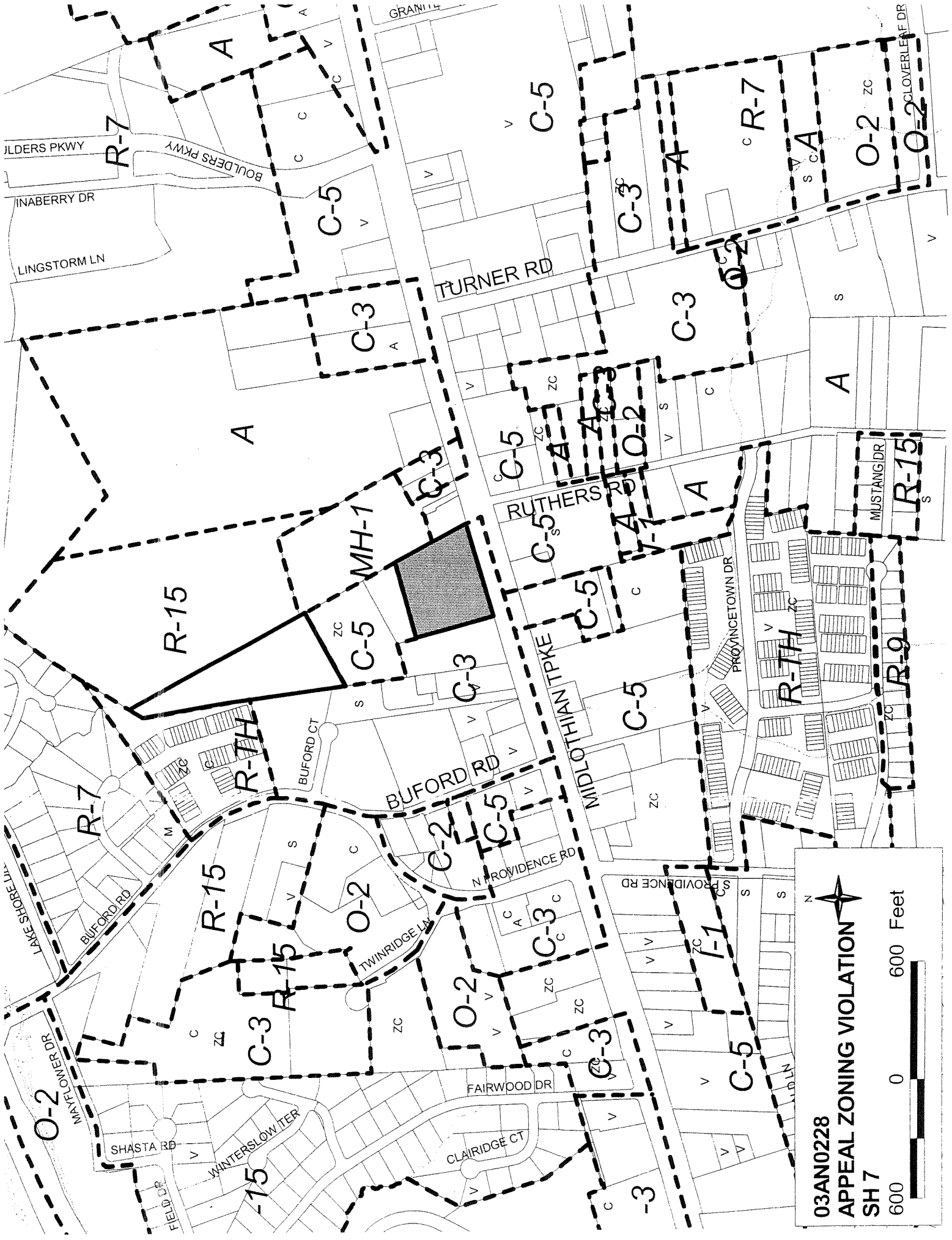
Advance America does not accept deposits. The appellant describes itself on the internet as a "payday advance company" offering "short term cash" for a "one-time fee". They advertise as providing a "simple cash advance against a personal check until the next payday arrives". Their slogan advertises "a quick, hassle free, and more cost-effective alternative to a credit card's late charges or banks' penalties for insufficient funds". The consumer's personal check is never deposited into an account on behalf of the consumer. Cash is provided immediately while a customer's personal check is held until payday. Contrasting a bank or savings and loan association's typical long-term relationship with its customers, the payday lender's affiliation with its customers is inherently limited to the two-week interval between paychecks. The Advance America internet site states that "it is not intended for repeated use" and cautions that "a payday advance is not a long-term solution for ongoing budget management".

Payday lending shares greater compatibility with those permissible conditional uses found in C-5 Districts, specifically identified in County Code Section 19-175 as being of the "same general character" as uses permitted by right in that District. Among these uses are bondsman, check cashing establishments, and pawnbrokers, all institutions which deal in the exchange of money but which the Zoning Ordinance has identified as sufficiently dissimilar to banks and savings and loan associations.

The Zoning Ordinance limits and restricts permissible uses in a C-3 District. Payday lending is not of the "same general character" as these uses. Payday lending can only conform to zoning requirements when located in a C-5 District, with a Conditional Use permit pursuant to County Code Section 19-175(j). As such, it was the determination of the Director of Planning that in order to continue its operations, Advance America must rezone from C-3 to C-5 and obtain a Conditional Use permit.

Accordingly, staff recommends that the Board of Zoning Appeals uphold the determination of the Director of Planning.

The Board may affirm or reverse the decision of the Director of Planning, in whole or part, or may modify the decision. The affirmative vote of at least three (3) members is necessary to reverse the decision or to decide in favor of the appellant. (County Code Section 19-20(d)).



03AN0228
APPEAL ZONING VIOLATION
SH 7

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